



Neutral Citation Number: [2024] EWHC 507 (Ch)

Case No: BL-2023-000145

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch D)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 7 March 2024

Before :

MASTER TEVERSON (sitting in retirement)

BETWEEN:-

(1) ALLISON MCINTYRE SHURE
(2) STUART LEIGHTON MILLS
(in their capacity as co-trustees of the Shure Marital Trust)

Claimants

-and-

(1) CAPVEST LIMITED
(2) CAPVEST ASSOCIATES LLP
(3) CAPVEST PARTNERS LLP

Defendants

Andrew de Mestre KC (instructed by Quinn Emanuel Urquhart & Sullivan LLP) for the Claimants
Emily Wood KC (instructed by Simpson Thacher & Bartlett LLP) for the Defendants

Hearing date 13 December 2023

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This Judgment was handed down remotely at 10am on Thursday 7 March 2024. It was sent by email to the parties' legal representatives and to National Archives

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MASTER TEVERSON

MASTER TEVERSON :

1. By a Part 8 claim issued on 3 February 2023 the Claimants seek (i) declaratory relief as to the true interpretation of section 2(d) of a letter agreement as amended and restated for the second time on 21 September 2012 (“the Letter Agreement”) and (ii) orders for the provision of information and documents in the form of Annex 3 to the Details of Claim (the “Information and Disclosure Requests”).
2. The Claimants are and were at all material times the trustees of the Shure Marital Trust (“the Trust”). The Trust was formed in January 2012 following the death of Randl. L. Shure (“Mr Shure”). Mr Shure was the co-founding partner of the CapVest private equity enterprise, together with Mr Seamus FitzPatrick. The First Claimant is the widow of Mr Shure. The First Claimant and her children are stated in the Details of Claim to be the only beneficiaries of the Trust.
3. The First Defendant, CapVest Limited is a private limited company registered in England and Wales.
4. The First Defendant was pursuant to an Investment Advisory Agreement dated 18 August 2006 (“the Original Agreement”) appointed to act as investment advisor to CapVest Private Equity II, L.P., a Bermuda exempted limited partnership, (“CapVest Private Equity II”) and to CapVest Equity Management II Limited, a Bermuda limited company (“CV Equity”). CapVest Private Equity II was the general partner of, and as such responsible for managing, CapVest Equity Partners II, L.P, a Bermuda registered exempted limited partnership, created as a vehicle for a second CapVest private equity fund (“Fund II”). CV Equity was in turn the general partner of CapVest Private Equity II and was the ultimate decision making authority for Fund II. The Trust held a 25% shareholding in CV Equity.
5. The First Defendant served as investment advisor in relation to Fund II between 18 August 2006 and 28 September 2012. With effect from 28 September 2012, pursuant to the terms of a Novation Deed dated 28 September 2012, the Second Defendant assumed and discharged all the obligations of the First Defendant under the Original Agreement to CapVest Private Equity II and CV Equity between 28 September 2012 and 16 April 2018. The Third Defendant was the investment advisor to Fund II-B to which reference is made below.

6. The Trust is or was at all material times a 25.5% shareholder in the First Defendant. The First Defendant was a corporate member of the Second Defendant, CapVest Associates LLP, a limited liability partnership registered in England and Wales.
7. In addition to being a 25.5% shareholder in the First Defendant, the Trust is or was an indirect investor in Fund II. The Trust invested in Fund II through a co-investment vehicle called CapVest Special Partners II, L.P., (“the Co-Invest LP”) a Bermudan Limited Partnership. The name of the Co-Invest LP reflected the fact that the limited partners who invested in Fund II were external to the Defendants whereas parties connected to the Defendants such as the Trust invested through the Co-Invest LP. The Trust was a limited partner in the Co-Invest LP and in the vehicles which held the carried interest in Fund II and the Co-Invest LP. The Trust in addition held a 25% shareholding in CapVest Group Limited, a Bermudan Company, which was the general partner of the Co-Invest LP.
8. The structure of the CapVest entities is set out in the chart at Annex 3 to the Response to the Details of Claim. A copy is attached as an appendix to this judgment. The Letter Agreement is shown at the top of the left hand column of the chart.
9. The Claimants as co-trustees of the Trust have since 2019 expressed in correspondence their concern about the sale in December 2017 of what were then the remaining assets of Fund II, being Fund II’s interests in MP Healthcare Holdings, an Irish private healthcare company, (“Mater Private”) and Valeo Foods Group Limited (“Valeo Foods”) (together “the Fund II Remaining Assets”). The purchaser was a US private equity fund known as HarbourVest Partners. The structure of the sale involved a new Bermudan registered limited partnership CapVest Private Equity II B, L.P. being set up as the purchasing vehicle. It was referred to as Fund II-B.
10. Mater Private and Valeo Foods were sold for the total sale price of EUR 219.3 million (“the First Sale”) of which it is understood by the Trust just over EUR 72 million was paid for Mater Private. The Trust is not and has never been an investor in Fund II-B. The Trust was offered the opportunity to become an investor in Fund II-B. The opportunity was declined by the Claimants on behalf of the Trust based, the Claimants say, on the information provided to them by the Defendants at the time.
11. In May 2018, five months after the First Sale, Fund II-B resold Mater Private to InfraVia Capital Partners (“InfraVia”), a French-based

infrastructure fund, in a deal reported as valuing Mater Private at EUR 500 million (“the Second Sale”).

12. The Claimants state in paragraph 15 of the Details of Claim that having learned of the Second Sale, they wish to understand better: (a) the process by which the Defendants came to recommend the First Sale to Fund II and to the Claimants; (b) whether the Claimants and the board of directors of the Defendants had been provided with all relevant information at the time, including the same information as received by other shareholders, pertaining to the proposed sale of the Fund II Remaining Assets; (c) how the Defendants identified potential buyers of the Fund II Remaining Assets; and (d) the purpose for, and process by which, Fund II was established.
13. The Claimants claim that the Trust has a contractual entitlement to the information and documentation requested in Annex 1 to a letter dated 8 August 2022 by the Claimants’ current solicitors, Quinn Emanuel Urquhart & Sullivan UK LLP to the Defendants’ solicitors, Simpson Thacher & Bartlett LLP, under the terms of the Letter Agreement.
14. The Letter Agreement is in the form of a letter sent by PineBridge Investments Holdings US LLC (“PineBridge”) to the other parties. It is headed “Re: CapVest Limited”. The parties to the Letter Agreement are set out in the first paragraph. In summary the parties were:-
 - (i) PineBridge, the successor in title to AIG Global Asset Management Holdings Corp., (“AIG”). AIG was the original sponsor of Fund II. PineBridge owns 50% of the equity in CVL.
 - (ii) The Trustees of the Trust. The Trust owns 25.5% of the equity in CVL.
 - (iii) Mr Seamus FitzPatrick (“the Principal”), the surviving co-founder of CVL, and his affiliate, Harden Capital Limited (“Harden”) in its capacity as General Partner of the Harden (Jersey) L.P. Mr Seamus FitzPatrick and Harden own 24.5% of the equity in CVL.
 - (iv) CVL, CVA, and CVP, the First, Second and Third Defendants respectively.
15. The purpose of the Letter Agreement is set out in paragraph 2 as follows:-

“This Letter Agreement shall, except as expressly provided herein, govern the relationship between PineBridge, the Principal and the Trusts (and their respective permitted successors and assigns) solely

with respect to their joint ownership of CapVest Limited, the management of CapVest Limited and its affiliate, CapVest Associates LLP (together with CapVest Limited, the “CapVest Entities”) and the CapVest Entities’ advisory relationship with the Funds.”

16. Paragraph 3 of the Letter Agreement contains a conflict resolution provision:-

“In connection with the formation of the Funds, the parties have executed various partnership and other agreements, and the constitutional documents of the various entities have been finalized (such agreements and documents (excluding the Articles of Association of CapVest Limited (as defined below) being referred to herein as the “Documents”). Solely to the extent that a provision of a Document directly addresses the joint ownership of CapVest Limited by the parties hereto and the management of the CapVest Entities by such parties, and such provision is inconsistent and conflicts with the terms of this Letter Agreement, the terms of this Letter Agreement shall prevail as between the Principal, the Trusts and PineBridge. For the avoidance of doubt, in all other respects, including without limitation, in respect of ownership and management of entities other than the CapVest Entities, allocation and payment of carried interest and participation on investment committees of the Funds, the Documents shall remain in full force and effect.”

17. Section 1 of the Letter Agreement records in its first paragraph that the Principal, the Trusts and PineBridge are the sole shareholders of CVL. It provides that CVL or CVA shall serve as “*the investment advisor to each of the Funds and/or their respective general partners or the general partners or managers of such general partners (the “CapVest Business”)*.” The second paragraph of section 1 records that the parties to the Letter Agreement thereby agree that the Principal and the Trusts, on the one hand, and PineBridge, on the other hand, each owns 50% of the equity interests in CapVest Limited.
18. Section 2 of the Letter Agreement is headed “Management and Control”. Section 2 (a) (i) states:-

“Subject to Section 2(b) and the Articles of Association, the management of the day to day operations of CapVest Limited shall be the sole right and responsibility of the Principal without need for approval (except where required by applicable law).”

Section 2(a)(i) then provides for the composition of the Board of Directors of CVL. It provides for the Board to consist of four members, one of whom is to be appointed by the Trust (“the Shure Director”), one by Harden (“the Harden Director”) and together with the Shure Director, the “Trust Directors”, and two of whom are to be appointed by PineBridge (“the B Directors”).

19. Section 2(b) sets out the Actions Requiring Board Approval. They are listed in clauses (i) through (xv). Section 2(c) states:-

“Except as is otherwise set forth in this Letter Agreement, the Articles of Association or that otherwise requires a determination by the Board pursuant to applicable law, all matters shall be determined in the sole discretion of the Principal.”

20. Section 2(d) contains the clause to be construed. It states:-

“Any member of the Board and any shareholder shall be entitled to request and obtain information in reasonable detail about matters referred to in this Section 2 and any other matters concerning the Company, CapVest Associates LLP and their respective operations.”

It is agreed that the reference in Section 2(d) to “the Company” is to the First Defendant, CapVest Limited.

21. Section 4 contains a Confidentiality provision. This provides:-

“The parties to this Letter Agreement (each a “Recipient”) will treat and hold as confidential any information concerning the business and affairs of the other parties and the terms of this Letter Agreement, except where such information is generally available to the public other than as a result of disclosure by a Recipient or any of their affiliates (the “Confidential Information”), and refrain from using any of the Confidential Information except in connection with this Letter Agreement.”

22. There is a disagreement between the parties as to the meaning of Section 2(d) of the Letter Agreement. The Claimants say Section 2(d) entitles the Trust to request and receive from the Defendants information in reasonable detail about any matters concerning the First and Second Defendants and their respective operations, including their advisory relationship with Fund II. The Defendants say that Section 2(d) does not entitle the Trust to work around the restrictions placed on it as a limited partner in the Co-Invest LP and does not entitle the Claimants to obtain information about the investment-specific advice produced by the First

Defendant or the Second Defendant in the day to day course of their business including investment advice provided to Fund II.

23. There was no dispute before me as to the correct approach to be adopted to the interpretation or construction of contracts. The task of the court is to “ascertain the objective meaning of the language which the parties have chosen to express their agreement”: *Wood v Capita* [2017] AC 1173 *per* Lord Hodge at [10].

24. In *Arnold v Britton* [2015] AC 1619 at [15] Lord Neuberger said:-

“When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffman in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, ..., in their documentary, factual and commercial context. The meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii), the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any parties’ intentions.”

25. In *Rainy Sky v Kookmin Bank* [2011] 1 WLR 2900 at [14] Lord Clarke said:-

“I agree with Lord Neuberger ... that those cases show that the ultimate aim of interpreting a provision in a contract, especially a commercial contract, is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. As Lord Hoffman made clear in the first of the principles he summarised in the Investors Compensation Scheme case [1998] 1 WLR 896, 912H, the relevant reasonable person is one who has all the background knowledge which could reasonably have been available to the parties in the situation in which they were at the time of the contract.”

26. In *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd* [2018] 2 All ER (Comm) 108 at 117 Popplewell J (as he then was) gave the following summary of the principles applicable to the construction of commercial documents:-

“The court’s task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated,. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.”

27. On behalf of the Claimants it was submitted that:-

- (1) The entitlement to request and obtain information in reasonable detail under Section 2(d) is the entitlement of any member of the Board and any shareholder. It puts shareholders and Board members on the same footing.
- (2) This reflects the fact that the shareholders were not merely passive investors. Each shareholder was entitled to appoint at least one member of the Board.
- (3) Under section 2(d) the information is expressly not limited to information about matters referred to in Section 2. This is clear from the words immediately following “*and any other matters..*”

- (4) The wording “*any other matters*” is wide. The only limitation placed on the “*any other matters*” is that the information needs to “*concern*” either CVL (the First Defendant), or CVA LLP (the Second Defendant), or “*their respective operations*”.
- (5) The phrase “*in reasonable detail*” limits the amount of information but not the subject matter. The phrase cannot be used to cut down the scope of the subject matter.
- (6) When considering what the parties meant by “*any other matters concerning*” the First or Second Defendants or “*their respective operations*”, it is material that the Letter Agreement in its second paragraph records that its purpose was to govern the relationship between PineBridge, the Principal and the Trusts (solely) with respect to:-
 - (i) their joint ownership of CVL (the First Defendant);
 - (ii) the management of CVL (the First Defendant) and its affiliate CVA (the Second Defendant; the “CapVest Entities”; and
 - (iii) the CapVest Entities’ advisory relationship with the Funds.

It was submitted that this shows that the scope of the Letter Agreement was intended to extend beyond matters limited to the internal management of the First and Second Defendants and to cover their advisory relationship with the Funds.

28. On behalf of the Defendants it was submitted that:-

- (1) The parties did not intend Section 2(d) to allow the Trust to work around the restrictions placed on it as a limited partner in the Co-Invest LP and obtain information or documents relating to the investment-specific advice CVL undertook for the general partner of Fund II.
- (2) The right to information in reasonable detail about the matters set out in Section 2 “*and any other matters*” means those relevant to them in their capacity as shareholders in CVL, which is the subject of the Letter Agreement.
- (3) The word “*solely*” in the second paragraph of the Letter Agreement is intended to limit the ambit of the agreement. It is concerned with the three areas of activity there set out, but not with

the other areas of activity engaged in by the parties, including the Trust's investment in the Co-Invest LP as limited partner.

(4) Section 2(d) would give the shareholders the right to call for the agreements governing the advisory relationship between the CapVest Entities and the Funds, as defined in the Letter Agreement, but not the investment-specific advice given by CVL.

(5) The Letter Agreement records that in connection with the formation of the Funds the parties have executed various partnership and other agreements that govern their rights and obligations in different capacities. The agreement confirms that unless those agreements trespass on "*the joint ownership of CVL*" or "*the management of the CapVest Entities*", "*in all other respects*" the documents that govern the parties' rights and obligations wearing those different hats are to govern.

(6) The intention of the parties that any information disclosed under the Letter Agreement was to be used for the stated purpose of the Letter Agreement is reflected in the Confidentiality Provision in Section 4. The Confidential Information that is disclosed ought not therefore to be used for the collateral purpose of seeking to make a claim as limited partner or for disseminating the same to limited partners in Fund II or in the Co-Invest LP for that purpose.

29. On behalf of the Defendants, it was further submitted in relation to the Information and Document Requests that:-

(1) Some of the Requests concern the sale of Mater Private by Fund- IIB, in which the Trust was not a limited partner, to InfraVia. The advisor on the sale by Fund II-B was not the First or Second Defendants but a different entity, CapVest Partners LLP, the Third Defendant. Section 2(d) however only applies to the operations of the First and Second Defendants. On no basis can the Letter Agreement extend to advice or recommendations provided by the Third Defendant to Fund II-B.

(2) Even if, contrary to their case, Section 2(d) was intended to extend to the substantive investment-specific advice given by the First or Second Defendants, the right is expressly limited to "*information in reasonable detail*". It was submitted that the Information and Disclosure Requests do not comply with that requirement. It is submitted that the Requests and in particular paragraphs 1-3 are not for information in reasonable detail but are for disclosure of every communication generated in the Defendants' day to day work.

- (3) The Information and Disclosure Requests are not appropriate for an order for specific performance. It is submitted that the disclosure required is vastly broad and unspecified and that the terms of the order are unclear as to what precisely the Defendants must produce in order to satisfy it.
- (4) In the course of the history of correspondence preceding the claim, the Defendants have in fact already disclosed material that continues to be sought as part of the order.
30. The court's task is to ascertain the objective meaning of the language used by the parties in Section 2(d). This involves considering the Letter Agreement as a whole against the factual background as it was known to the parties at the time of the Letter Agreement. It involves checking each proposed interpretation of the language used against that background.
31. The first paragraph of the Letter Agreement sets out factual background relating to the parties, the Original Letter Agreement dated 24 August 1999, the Amended Letter Agreement dated 17 March 2010 and details of the Funds as defined.
32. The second paragraph governs the scope of the Letter Agreement. It governs the relationship between PineBridge, the Principal and the Trusts solely with respect to:-
- (i) their joint ownership of CapVest Limited, the First Defendant;
 - (ii) the management of CapVest Limited and its affiliate, CapVest Associates LLP ("the CapVest Entities"); and
 - (iii) the CapVest Entities' Advisory relationship with the Funds.
33. The conflict resolution provisions in the third paragraph provide that the terms of the Letter Agreement are to prevail as between the Principal, the Trusts and PineBridge in relation to (i) and (ii) but not in relation to (iii).
34. It is part of the factual background that there was an existing advisory relationship between CapVest Limited, CV Equity and CapVest Private Equity II, L.P. the fund management vehicles for Fund II. The terms of that arrangement were contained in an Investment Advisory Agreement dated 18 August 2006. The services to be provided by CapVest Limited are set out in Section 2. They include originating, investigating and reviewing potential investments and providing assistance in relation to the negotiation and arrangement of deals and liaising as required with the other advisors to CV Equity and CapVest Private Equity II.

35. The Letter Agreement appears to contemplate the role of CapVest Limited under the Investment Advisory Agreement being carried out by CapVest Associates LLP. A Novation Deed having that effect was executed on 28 September 2012, around a week after the date of the Letter Agreement.
36. At the time of the Original Letter Agreement and the Amended Letter Agreement, Mr Shure and Mr FitzPatrick were the A Directors of the First Defendant. Subject to the provisions of the articles, and any agreement between shareholders, the A Directors were responsible for the management of the First Defendant's business.
37. Mr Shure died in January 2012. The Letter Agreement is dated 21 September 2012, some nine months after the death of Mr Shure. The Letter Agreement provides that the management of the day to day operations of the First Defendant shall, subject to Section 2(b) and the Articles of Association, be the sole right and responsibility of the Principal, Mr FitzPatrick, the surviving A Director.
38. Section 2(d) is part of the Section in the Letter Agreement which deals with management and control. Section 2(a)(i) provides that subject to Section 2(b), the management of the day to day operations of CapVest Limited "*shall be the sole right and responsibility of the Principal*". Section 2(a)(i) then provides for the composition of the Board. It provides for two of the board members ("the B Directors") to be appointed by PineBridge as well as one each by the Trust and Harden. Approval of the matters set forth in Section 2(b) requires the affirmative vote of at least one B Director.
39. Section 2(b) sets forth the actions requiring board approval. These are actions which the Principal cannot take unilaterally. They all relate to actions by or relating to CapVest Limited.
40. Section 2(c) provides "*Except as is otherwise set forth in this Letter Agreement ... , all matters shall be determined in the sole discretion of the Principal*". This reinforces the role of the Principal.
41. Section 2(d) is concerned with the right to request and obtain information. It is a right to request and obtain information "*in reasonable detail*". It is given to any member of the Board and any shareholder. It puts the shareholders of CapVest Limited on the same footing as Board members.
42. This reflects the fact that the shareholders were not external shareholders. In the case of the Trusts, they were affiliated to either Mr Shure or to Mr FitzPatrick, the original A Directors responsible for the management of

CapVest Limited's business. In the case of PineBridge it was the successor to AIG, that had provided directly, or through one or more of its affiliates, financial and other support for the formation of Fund II.

43. It is clear that Section 2(d) is not limited to the matters referred to in Section 2. This is made clear by the second part of Section 2(d) "*and any other matters concerning the Company, CapVest Associates LLP and their respective operations.*".
44. The second part of Section 2(d) is expressed in wide terms. I see no reason to restrict its width provided that the information requested is requested "in reasonable detail" and relates to the respective operations of the First and Second Defendants.
45. It is part of the factual background that the Trusts were both limited partners in the Co-Invest having made substantial capital commitments to specified investment opportunities that included Mater Private. It is also part of the factual background that following the death of Mr Shure, the day to day management of the operations of CapVest Limited was the sole right and responsibility of Mr FitzPatrick.
46. The Defendants place weight on the fact that the investors in the Co-Invest were limited partners who as such were not permitted to participate in the management of the limited partnership. They point out that a limited partner's right to call for information is restricted by the terms of the limited partnership agreement. The Defendants say that the possible claims that the Trust alleges it might have against the Defendants, in respect of which it seeks information, is brought in substance and reality in its capacity as a limited partner in the Co-Invest.
47. The Defendants point to and rely on the conflict resolution provisions contained in the second paragraph of the Letter Agreement and in particular on the fact that it is stated that the terms of the Letter Agreement prevail in relation to the joint ownership of CapVest Limited and the management of the CapVest Entities but not in relation to the CapVest Entities' advisory relationship with the Funds.
48. The implication and effect of the Defendants' construction of the Letter Agreement is, for example, that the Claimants are not entitled to see the written advice and investment recommendations made by the First or Second Defendants to CV Equity. So long as the management of the First Defendant was in the hands of both Mr Shure and Mr FitzPatrick it is unlikely that either the Trust or Harden would have felt any need to see

such advice. They would have been content to leave the matter in the hands of their respective principal.

49. Following the death of Mr Shure, an imbalance between the Trusts in their degree of management and control potentially arose. The imbalance could in theory have been the other way around with Mr Shure being left as the sole Principal.
50. A person with all the background knowledge available to the parties would in my view prefer a wider rather than a narrower construction of Section 2(d). Such a person would take into account the connection between the First and Second Defendants as investment advisors and the Trusts as indirect investors in Fund II. So long as Mr Shure and Mr FitzPatrick were both A Directors in charge of the management of CapVest Limited, neither affiliate trust was likely to be concerned to request information concerning investment advice or recommendations. Section 2(d) was up until that point likely to have been of most importance to PineBridge. PineBridge was not a limited partner in Fund II or the Co-Invest.
51. Following the death of Mr Shure, a person with all the relevant background knowledge would in my view construe Section 2(d) widely enough so as to allow it to be used by the Trust to request information in reasonable detail about matters falling outside the day to day management of the First or Second Defendants. This would include advice and assistance given in relation to a disposal of a major asset.
52. A reasonable person with all the background knowledge would in my view attach significance to the fact that under Section 2(d) the same right to request and obtain information was given to shareholders as to Board members and to the prior involvement of Mr Shure and Mr FitzPatrick in the management of CapVest Limited. The investment advice and recommendations made by Mr Shure and Mr FitzPatrick and their oversight could reasonably have been expected to provide a significant degree of protection and oversight to the position of the Trusts as indirect investors in Fund II.
53. For those reasons, I consider that the construction placed by the Defendants on Section 2(d) is too narrow. I do not agree with them that all investment-specific advice or recommendations are outside the scope of Section 2(d). I have considered the detailed arguments relied upon by the Defendants in support of their narrower construction of Section 2(d). I do not consider that the parties intended Section 2(d) to exclude the Trusts from information in reasonable detail about investment advice and

decisions which might significantly affect their capital contributions to the assets.

54. I prefer to construe Section 2(d) more broadly in a way that in my view takes into account the wider background including the fact that Mr Shure and Mr FitzPatrick were co-founders and in charge of the management of the business of the First Defendant as part of a group of entities through which investments were made by their affiliate trusts. I consider that Section 2(d) provided an additional right or protection to the Trusts. I recognise that this right was given to the Trusts in their capacity as shareholders in the First Defendant but in my view, those rights should be seen in the context of the connection between the co-founders as investment advisors and the Trusts as their family investment structures investing indirectly in Fund II.
55. I propose to grant a declaration that under Section 2(d) the Claimants as trustees of the Trust are entitled to request and obtain information in reasonable detail about (i) the advice and investment recommendations provided by the First or Second Defendants to CV Equity and CapVest Private Equity II L.P. and of (ii) any assistance provided by them in relation to the negotiation and arrangement of the disposal of the remaining assets in Fund II including Mater Private and Valeo Foods. Such information may include reasonable requests for documents containing or evidencing those matters including communications with the other advisors to CV Equity and CapVest Private Equity II L.P.
56. In my view, the information and document requests contained in Annex 3 are too widely expressed. In particular paragraphs 1(a) and (b) and 2 are expressed far too widely.
57. It is accepted on behalf of the Claimants that the scope of the Letter Agreement does not extend to the Third Defendant which acted as the investment advisor to Fund II-B.
58. It is also accepted on behalf of the Claimants that information that has already been provided should not be the subject of a further request.
59. I will direct that the Claimants do within 14 days of this judgment being handed down file and serve an amended information and document request. The Defendants will then have 14 days to put forward any amendments thereto. These may include proposals relating to confidentiality such as limiting the persons to whom the information and documents should be shown. I will give permission for either party to

restore the claim if the terms of the information and document request cannot be agreed.

60. I wish to make it clear that nothing in this judgment is to be treated as expressing a view on the merits of any proposed claim resulting from the matters of concern to the Claimants.
61. This judgment is to be handed down remotely at 10am on Thursday 7 March 2024 without any attendances required. I would be grateful to receive typographical corrections from counsel by 4pm on Wednesday 6 March. I am grateful to counsel and their instructing solicitors for their submissions and trial preparation.

Appendix

[Annex 3]

Annex 3: CapVest Fund II, CapVest Limited and CapVest Associates LLP Structure Chart

